

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

“TRACK THREE CASES”

MDL 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**ORDER AMENDING SECTION VIII OF THE TRACK THREE CIVIL TRIAL ORDER
AND ESTABLISHING PROCEDURE FOR
DESIGNATION AND USE OF DEPOSITION TESTIMONY AT TRIAL**

To coordinate the procedure for the designation and use of deposition testimony for trial as ordered by the Court, this Order is entered to amend Section VIII (Deposition Testimony) of the Track Three Civil Jury Trial Order (ECF. No. 3758) and establish the following schedule and procedure for deposition designations. As with objections to witnesses and exhibits, the Court has neither the time nor resources to address excessive objections to deposition testimony. When a videotape deposition will be presented in lieu of live testimony, counsel must file a complete transcript of designated testimony prior to its use and follow Local Rule 32.1.

Category of Deadline	Agreed-Upon Deadline
1. Parties exchange affirmative designations for any witnesses not previously exchanged in 1B, or where designations are materially different than exchanged in 1B.¹	July 23, 2021

¹ Defendants have asked for the inclusion of Categories of Deadlines 1-3 understanding that the over-designation of testimony is likely to occur given the exchange date is three months before trial. The Parties will perform Categories of Deadlines 1-3 in good faith, recognizing that these designations will necessarily be broader than the final designations exchanged pursuant to the deadlines associated with Categories of Deadlines 10-15. For this reason, the Parties will not exchange objections to affirmative or responsive designations for Categories of

2. Parties exchange responsive designations for the above. In addition to their responsive designations, the Parties may make additional non-repetitive and non-responsive designations from the depositions previously affirmatively designated during this period.	August 11, 2021
3. Parties meet and confer to attempt to reach agreement on witnesses for whom to submit limited advance deposition designations.	August 12-13, 2021
4. Disclosure of limited advance affirmative designations for depositions to be played trial²	August 20, 2021
5. Objections to limited advance affirmative deposition designations due³ Limited advance Completeness and counter-designations due⁴	August 27, 2021
6. Objections to limited advance completeness and counter-designations due Responses to objections to limited	September 3, 2021

Deadlines 1-2 and will not seek rulings from the Court on the admissibility of these designations, until Categories of Deadlines 10-15, absent agreement. The Parties may still revise designations and exchange reply designations pursuant to Categories of Deadlines 4-9 or 10-15. Any Party may also designate a new witness, pursuant to Categories of Deadlines 10-15, for good cause (*e.g.*, if a witness becomes unavailable, if a deposition occurs after earlier designation deadlines, or to designate from a rebuttal witness).

² For the convenience of the Court and the Special Master, to the extent the Parties have deposition designations that they are fairly certain they will seek to play at trial, the Parties may submit, in advance of trial, a limited number of deposition designations and related objections for rulings. The Parties will work in good faith to present only those designations that they are fairly certain will be used at trial. Nothing here is meant to supplant the procedures regarding deposition designations laid out in Categories of Deadlines 1-2 and 10-15.

³ Objections and responses to objections shall be succinctly stated without voluminous argument (*e.g.*, a hearsay objection shall be denoted simply as “hearsay,” and the reply shall be denoted simply by identifying the hearsay exception (*e.g.*, “public record”) or the non-hearsay purpose (*e.g.*, “offered for effect on the listener”). The parties may alternatively decide to forego responses in favor of a direct meet and confer.

⁴ Testimony from a different witness may not be used as a completeness or counter-designation at trial; however, the Parties may supplement their affirmative designations, including by adding affirmative designations by a new witness, to address any testimony affirmatively designated by the opposing Party by August 27, 2021.

affirmative designations due	
Limited reply designations to limited advance designations due	
7. Objections to limited reply designations due	September 8, 2021
Responses to objections to limited completeness and counter-designations due	
8. Responses to objections to limited reply designations due	September 10, 2021
9. Submit limited advance deposition designations and related objections for ruling by Special Master Cohen	September 13, 2021
10. Affirmative deposition designations disclosed⁵	9 p.m. on the Friday two weeks prior to the week of anticipated use at trial
Party seeking to admit identified deposition exhibit(s) will provide list of trial exhibit numbers of exhibit(s) sought to be admitted to all parties⁶	
11. Objections to affirmative deposition designations and objections to deposition exhibits sought to be admitted due⁷	Monday prior to the week of anticipated use at trial at 7 p.m.
Completeness and counter-designations due⁸	

⁵ The Parties agree to work in good faith to identify a mutually agreeable format for the exchange of page and line citations for deposition testimony in a manner that permits their respective technical teams to efficiently cut the final videos. The parties further agree that attorney objections and commentary shall not be included in any parties' designations.

⁶ Excluding obvious clerical errors, if a Party seeking to admit deposition exhibit(s) does not provide a list of trial exhibit numbers, for which branded exhibits have previously been provided, prior to the objections due date, the Party has waived seeking admission of the document through the deposition testimony.

⁷ Objections and responses to objections shall be succinctly stated without voluminous argument (*e.g.*, a hearsay objection shall be denoted simply as "hearsay," and the reply shall be denoted simply by identifying the hearsay exception (*e.g.*, "public record") or the non-hearsay purpose (*e.g.*, "offered for effect on the listener"). The parties may alternatively decide to forego responses in favor of a direct meet and confer.

⁸ Testimony from a different witness may not be used as a completeness or counter-designation at trial; however, the Parties may supplement their affirmative designations, including by adding affirmative designations

12. Objections to completeness and counter-designations due Responses to objections to deposition exhibits sought to be admitted due Responses to objections to affirmative designations due Reply designations due	7 p.m. on the Wednesday prior to the week of anticipated use at trial
13. Objections to reply designations due Responses to objections to completeness and counter-designations due	7 p.m. on the Thursday prior to the week of anticipated use at trial
14. Responses to objections to reply designations due	5 p.m. on the Friday prior to the week of anticipated use at trial
15. Meet and confer regarding objections and submission of disputed designations and exhibits to Special Master Cohen and/or the Court	The parties will meet and confer regarding objections to designations. All unresolved objections shall be submitted to Special Master Cohen and/or the Court for resolution as soon as possible thereafter, but not later than 48 hours prior to anticipated use at trial ⁹
16. Offering party provides final video files and transcripts of deposition testimony (including all remaining affirmative, completeness, counter, and reply designations) to non-offering parties for their review prior to introduction at trial.	The offering party will disclose final video files and transcripts by 12 p.m. noon on the day prior to play

SO ORDERED

Dated: August 11, 2021

/s/ Dan A. Polster
The Honorable Dan A. Polster

from a new witness, to address any testimony affirmatively designated by the opposing Party at the same time as completeness and counter designations.

⁹ It is the Parties' intent to provide to the Court any disputes requiring a ruling as early as possible, but as specified above, no later than 48 hours prior to intended play.